

IC 12-17.2-4

Chapter 4. Regulation of Child Care Centers

IC 12-17.2-4-1

Operation of center without proper licensure; prohibition

Sec. 1. (a) A person may not operate a child care center without a license issued under this article.

(b) The state or a political subdivision of the state may not operate a child care center without a license issued under this article.

(c) A person may not operate a child care center where:

- (1) the number of children maintained on the premises at any one time is greater than the number authorized by the license; and
- (2) the children are maintained in a building or place not designated by the license.

As added by P.L.1-1993, SEC.141. Amended by P.L.136-1993, SEC.9.

IC 12-17.2-4-2

Conditions for licensing; waivers and variances

Sec. 2. (a) A license may be issued only if a child care center is in compliance with food, health, safety, and sanitation standards as determined by the division under rules adopted by the division under IC 12-17.2-2-4 or in accordance with a variance or waiver approved by the division under IC 12-17.2-2-10.

(b) A license may be issued only if the child care center is in substantial compliance with the fire and life safety rules as determined by the state fire marshal under rules adopted by the division under IC 12-17.2-2-4 or in accordance with a variance or waiver approved by the division under IC 12-17.2-2-10.

(c) The division may issue a waiver or variance regarding a determination by the division or the state fire marshal under subsections (a) and (b).

(d) Except as provided in subsection (e), the division may issue a license under this chapter only if the child care center is staffed, when children are being cared for, by at least one (1) child care provider who is annually certified in a program on pediatric cardiopulmonary resuscitation and pediatric airway obstruction under the American Heart Association's Basic Life Support Course D or any other comparable course approved by the division.

(e) The requirement set forth in subsection (d) does not apply to a child care center that:

- (1) serves only children who are at least thirteen (13) years of age and less than twenty-one (21) years of age; and
- (2) has on duty, when the children are being cared for, at least one (1) child care provider who is annually certified in a program on cardiopulmonary resuscitation as required by the division.

(f) Upon request, the county office of family and children shall provide, within forty-eight (48) hours, excluding weekends and holidays, copies of substantiated noncompliances and other substantiated complaints filed with the division of family and children concerning a licensed child care center.

As added by P.L.1-1993, SEC.141. Amended by P.L.136-1993, SEC.10; P.L.247-2001, SEC.6; P.L.47-2002, SEC.2.

IC 12-17.2-4-3

Applying for licenses

Sec. 3. (a) An applicant must apply for a child care center license on forms provided by the division.

(b) An applicant must submit the required information as part of the application.

(c) The applicant must submit with the application a statement attesting that the applicant:

(1) has not been convicted of:

(A) a felony;

(B) a misdemeanor relating to the health or safety of children;

(C) a misdemeanor for operating a child care center without a license under section 35 of this chapter; or

(D) a misdemeanor for operating a child care home without a license under IC 12-17.2-5-35; and

(2) has not been charged with:

(A) a felony;

(B) a misdemeanor relating to the health or safety of children;

(C) a misdemeanor for operating a child care center without a license under section 35 of this chapter; or

(D) a misdemeanor for operating a child care home without a license under IC 12-17.2-5-35;

during the pendency of the application.

(d) An applicant must submit the necessary information, forms, or consents for the division to conduct a criminal history check.

(e) The applicant must do the following:

(1) Conduct a criminal history check of the applicant's employees and volunteers.

(2) Maintain records of each criminal history check.

As added by P.L.1-1993, SEC.141. Amended by P.L.61-1993, SEC.10; P.L.136-1993, SEC.11; P.L.2-1995, SEC.53; P.L.109-2002, SEC.7.

IC 12-17.2-4-4

Repealed

(Repealed by P.L.61-1993, SEC.67 and P.L.136-1993, SEC.24.)

IC 12-17.2-4-5

Grounds for denial of license applications

Sec. 5. (a) The following constitute sufficient grounds for a denial of a license application:

(1) A determination by the division of child abuse or neglect (as defined in IC 31-9-2-14) by the applicant.

(2) A criminal conviction of the applicant, or of an employee or a volunteer of the applicant, of any of the following:

(A) A felony.

(B) A misdemeanor related to the health or safety of a child.

(C) A misdemeanor for operating a child care center without a license under section 35 of this chapter.

- (D) A misdemeanor for operating a child care home without a license under IC 12-17.2-5-35.
- (3) A determination by the division that the applicant made false statements in the applicant's application for licensure.
- (4) A determination by the division that the applicant made false statements in the records required by the division.
- (5) A determination by the division that the applicant previously operated a:
- (A) child care center without a license under this chapter; or
 - (B) child care home without a license under IC 12-17.2-5.
- (b) Notwithstanding subsection (a)(2), if:
- (1) a license application is denied due to a criminal conviction of an employee or a volunteer of the applicant; and
 - (2) the division determines that the employee or volunteer has been dismissed by the applicant;
- the criminal conviction of the former employee or former volunteer does not require denial of a license application.
- As added by P.L.1-1993, SEC.141. Amended by P.L.136-1993, SEC.12; P.L.1-1997, SEC.66; P.L.109-2002, SEC.8.*

IC 12-17.2-4-6

Incomplete applications

Sec. 6. The division may not act on an incomplete application. The division shall return an incomplete application with a notation as to omissions. The return of an incomplete application shall be without prejudice.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-7

Investigations of applicants

Sec. 7. The division shall investigate a person seeking licensure to determine whether the person is in compliance with this article and the rules adopted under this article. The investigation shall be conducted at a reasonable time and in a reasonable manner, in announced or unannounced visits. Activities may include onsite inspections, record reading, observation, and interviewing. The division may require that evidence of compliance with the rules be presented in a form and manner specified in the rules.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-8

Issuance of licenses

Sec. 8. The division shall issue a license to a person who meets all of the license requirements when an investigation shows the applicant to be in compliance under this article.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-9

Eligibility for variances

Sec. 9. A child care center may be eligible to receive a variance from the requirements of this chapter by complying with

IC 12-17.2-2-10.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-10

Denial of licenses

Sec. 10. (a) The division shall deny a license if an applicant fails to meet the requirements for a license.

(b) The division shall send written notice by certified mail that the application has been denied and give the reasons for the denial.

(c) An administrative hearing concerning the denial of a license shall be provided upon written request by the applicant. The request must be made within thirty (30) calendar days after receiving the written notice under subsection (b).

(d) The administrative hearing shall be scheduled within sixty (60) calendar days after receiving the written request.

(e) The administrative hearing shall be held in accordance with IC 4-21.5-3.

(f) The division shall issue a decision within sixty (60) calendar days after the conclusion of the hearing.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-11

Investigation of unlicensed premises

Sec. 11. The division shall investigate any premises that the division has reason to believe are being used for child care without a license in circumstances where a license is required.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-12

Expiration, transferability, display, and renewal of licenses

Sec. 12. (a) A license for a child care center expires two (2) years after the date of issuance, unless revoked, modified to a probationary or suspended status, or voluntarily returned.

(b) A license issued under this chapter:

(1) is not transferable;

(2) applies only to the licensee and the location stated in the application; and

(3) remains the property of the division.

(c) A current license shall be publicly displayed.

(d) When a licensee submits a timely application for renewal, the current license shall remain in effect until the division issues a license or denies the application.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-13

Provisional licenses

Sec. 13. (a) The division may grant a provisional license to an applicant who is not able to demonstrate compliance with a rule because the child care center is not in full operation.

(b) A provisional license shall be granted for a limited period not to exceed one (1) year and is subject to review every three (3) months.

As added by P.L.1-1993, SEC.141. Amended by P.L.136-1993, SEC.13.

IC 12-17.2-4-14

Probationary licenses

Sec. 14. (a) The division may grant a probationary license to a licensee who is temporarily unable to comply with a rule if:

- (1) the noncompliance does not present an immediate threat to the health and well-being of the children;
- (2) the licensee files a plan with the division or the state fire marshal to correct the areas of noncompliance within the probationary period; and
- (3) the division or state fire marshal approves the plan.

(b) A probationary license is valid for not more than six (6) months. The division may extend a probationary license for one (1) additional period of six (6) months.

(c) An existing license is invalidated when a probationary license is issued.

(d) At the expiration of the probationary license, the division shall reinstate the original license to the end of the original term of the license, issue a new license, or revoke the license.

(e) Upon receipt of a probationary license, the licensee shall return to the division the previously issued license.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-15

Inspections

Sec. 15. The division and the state fire marshal shall do the following:

- (1) Make annual onsite inspections.
- (2) Keep written records of their monitoring activities and inspections.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-16

Cooperation by licensees

Sec. 16. The licensee shall cooperate with the division and the state fire marshal in carrying out these activities, including permitting the division and the state fire marshal to conduct announced or unannounced inspections.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-17

Unscheduled visits by parents and guardians

Sec. 17. Unscheduled visits by a custodial parent or guardian of a child shall be permitted at any time the child care center is in operation.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-18

Records

Sec. 18. (a) A licensee shall keep records regarding each child in the

control and care of the licensee as the division requires and shall report to the division, upon request, the facts the division requires with reference to children.

(b) The division shall keep records regarding children and facts learned about children and their parents or relatives confidential.

(c) The following are permitted access to records regarding children and facts learned about children:

- (1) A state agency involved in the licensing of the child care center.
- (2) A legally mandated child protection agency.
- (3) A law enforcement agency.
- (4) An agency having the legal responsibility to care for a child placed at the child care center.
- (5) The parent, guardian, or custodian of the child at the child care center.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-18.1

Immunizations

Sec. 18.1. (a) After December 31, 2002, a licensee shall maintain and annually update documentation provided by the physician of each child who is cared for in a child care center where the licensee provides child care that the child has received complete age appropriate immunizations, including:

- (1) conjugated pneumococcal vaccine; and
- (2) varicella vaccine or a demonstrated immunity to varicella.

The state department of health shall determine for each age level the immunizations that constitute complete age appropriate immunizations.

(b) A licensee meets the requirement of subsection (a) if:

- (1) a child's parent:
 - (A) objects to immunizations for religious reasons; and
 - (B) provides documentation of the parent's objection; or
- (2) the child's physician provides documentation of a medical reason the child should not be immunized;

and the licensee maintains and annually updates the documentation provided by the parent or physician under this subsection.

As added by P.L.121-2002, SEC.2.

IC 12-17.2-4-18.5

Duties of child care centers regarding missing child reports

Sec. 18.5. (a) Upon receiving a report under IC 31-36-1-4, a child care center shall thoroughly inspect the report. If the child care center finds that a child on the report required under IC 31-36-1-4 is enrolled at the child care center, the child care center shall immediately notify the Indiana clearinghouse for information on missing children.

(b) Upon receiving a report under IC 31-36-1-4, a child care center shall attach a notice to the child's enrollment records stating that the child has been reported missing. The child care center shall remove the notice when the center is notified under IC 31-36-2-6 that the child has been found.

(c) If a request for the enrollment records of a missing child is

received, the child care center shall:

(1) obtain:

(A) the name, address, and telephone number of the person making the request; and

(B) the reason that the person is requesting the school records; and

(2) immediately notify the Indiana clearinghouse for information on missing children.

(d) The child care center may not issue a copy of the enrollment records of a child reported missing without authorization from the Indiana clearinghouse for information on missing children and may not inform the person making the request that a notice that the child has been reported missing has been attached to the child's records.

As added by P.L.12-1994, SEC.8. Amended by P.L.1-1997, SEC.67.

IC 12-17.2-4-19

Notice of enforcement actions; informal meetings

Sec. 19. Except as provided in section 29 of this chapter, the division shall give a licensee thirty (30) calendar days written notice by certified mail of an enforcement action. The licensee shall also be provided with the opportunity for an informal meeting with the division. The licensee must request the meeting within ten (10) working days after receipt of the certified notice.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-20

Administrative hearings

Sec. 20. (a) An administrative hearing concerning the decision of the division to impose a sanction under this chapter shall be provided upon a written request by the child care center. The request must be made within thirty (30) calendar days after receiving notice under section 19 of this chapter. The written request must be made separately from an informal meeting request made under section 19 of this chapter.

(b) The administrative hearing shall be held within sixty (60) calendar days after receiving the written request.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-21

Procedure for administrative hearings

Sec. 21. A hearing requested under section 20 of this chapter shall be held in accordance with IC 4-21.5-3.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-22

Issuance of decisions

Sec. 22. The division shall issue a decision within sixty (60) calendar days after the conclusion of the hearing.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-23

Cessation of operations upon suspension of license

Sec. 23. If a license is suspended, a licensed child care center shall cease operation and may not display the license.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-24

Reinstatement of suspended licenses

Sec. 24. To reinstate a suspended license the following must occur:

- (1) The licensee must, within thirty (30) days of the notice of the suspension, submit a plan of corrective action to the division for approval.
- (2) The plan must outline the steps and timetable for immediate correction of the violations that caused the division to suspend the license.
- (3) The division must approve the plan.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-25

Actions of division following suspensions of licenses

Sec. 25. Following the suspension, the division shall do one (1) of the following:

- (1) Reinstate the license for the term of the original license.
- (2) Revoke the license.
- (3) Issue a new license.
- (4) Deny a reapplication.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-26

Cessation of operations upon revocation of license

Sec. 26. A child care center shall cease operation when the license of the child care center is revoked.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-27

Notice of license revocation or suspension

Sec. 27. (a) After a license is revoked or suspended, the division shall notify in writing each person responsible for the children in care to ensure that those children are removed.

(b) The written notice shall be sent to the last known address of the person responsible for the child in care and shall state that the license of the child care center has been revoked or suspended.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-28

Judicial review

Sec. 28. A final decision of the division made after a hearing is subject to judicial review under IC 4-21.5-5.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-29

Investigation of unlicensed facilities; injunctions; civil penalties; removal of children

Sec. 29. (a) The division shall investigate a report of an unlicensed child care center and report the division's findings to the attorney general and to the county department of public welfare attorney and the prosecuting attorney in the county where the child care center is located.

(b) The attorney general or the county department of public welfare attorney may do the following:

(1) Seek the issuance of a search warrant to assist in the investigation.

(2) File an action for injunctive relief to stop the operation of a child care center if there is reasonable cause to believe that:

(A) the child care center is operating without a license required under this article; or

(B) a licensee's noncompliance with this article and the rules adopted under this article creates an imminent danger of serious bodily injury to a child or an imminent danger to the health of a child.

(3) Seek in a civil action a civil penalty not to exceed one hundred dollars (\$100) a day for each day a child care center is operating without a license required under this article.

(c) The division may provide for the removal of children from child care centers described in subsection (b).

(d) An opportunity for an informal meeting with the division shall be available after the injunctive relief is ordered.

(e) The civil penalties collected under this section shall be deposited in the child care fund.

(f) Section 34 of this chapter does not apply to the civil penalties imposed under this section.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-30

Expiration of injunctions for operation without a license

Sec. 30. A court order granted under section 29(b)(2)(A) of this chapter expires when the child care center is issued a license.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-31

Expiration of injunctions for creation of imminent danger

Sec. 31. A court order granted under section 29(b)(2)(B) of this chapter expires upon the later of the following:

(1) Sixty (60) calendar days after the order is issued.

(2) When a final division decision is issued under sections 20 through 22 of this chapter if notice of an enforcement action is issued under section 19 of this chapter.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-32

Grounds for revocation of licenses

Sec. 32. (a) The following constitute sufficient grounds for revocation of a license:

(1) A determination by the division of child abuse or neglect (as defined in IC 31-9-2-14) by the licensee.

(2) A criminal conviction of the licensee, or of an employee or a volunteer of the licensee, of any of the following:

(A) A felony.

(B) A misdemeanor related to the health or safety of a child.

(C) A misdemeanor for operating a child care center without a license under section 35 of this chapter.

(D) A misdemeanor for operating a child care home without a license under IC 12-17.2-5-35.

(3) A determination by the division that the licensee made false statements in the licensee's application for licensure.

(4) A determination by the division that the licensee made false statements in the records required by the division.

(5) A determination by the division that the licensee previously operated a:

(A) child care center without a license under this chapter; or

(B) child care home without a license under IC 12-17.2-5.

(b) Notwithstanding subsection (a)(2), if:

(1) a license is revoked due to a criminal conviction of an employee or a volunteer of the licensee; and

(2) the division determines that the employee or volunteer has been dismissed by the licensee;

the criminal conviction of the former employee or former volunteer does not require revocation of a license.

As added by P.L.1-1993, SEC.141. Amended by P.L.136-1993, SEC.14; P.L.1-1997, SEC.68; P.L.109-2002, SEC.9.

IC 12-17.2-4-33

Disciplinary sanctions

Sec. 33. (a) A licensee shall operate a child care center in compliance with the rules established under this article and is subject to the disciplinary sanctions under subsection (b) if the division finds that the licensee has violated this article.

(b) The division may impose any of the following sanctions when the division finds that a licensee has committed a violation under subsection (a):

(1) After complying with the procedural provisions in sections 19 through 22 of this chapter:

(A) suspend the license for not more than six (6) months; or

(B) revoke the license.

(2) Seek civil remedies under section 29 of this chapter.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-34

Civil penalty for violation of article

Sec. 34. (a) In addition to the other penalties imposed under this chapter, the division may impose a civil penalty of not more than one

thousand dollars (\$1,000) for the violation of this article.

(b) The division shall deposit the civil penalties collected under this section in the child care fund.

As added by P.L.1-1993, SEC.141.

IC 12-17.2-4-35

Violations of chapter

Sec. 35. A person who knowingly or intentionally violates this chapter commits a Class B misdemeanor.

As added by P.L.1-1993, SEC.141.